

Pension Benefit Guaranty Corporation

§ 4044.17

annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date.

(ii) Unless a benefit was in pay status before the beginning of the 3-year period ending on the termination date, the benefit assigned to priority category 3 with respect to a participant is limited to the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the termination date. If the annuity form of benefit under a formula that appears to produce the lowest benefit differs from the normal annuity form for the participant under paragraph (b)(2)(ii) of this section, the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors. In the absence of plan factors, the factors in subpart B of part 4022 of this chapter shall be used.

(iii) For purposes of this paragraph, if a terminating plan has been in effect less than five years on the termination date, computed in accordance with paragraph (b)(6) of this section, the lowest annuity benefit under the plan during the 5-year period ending on the termination date is zero. If the plan is a successor to a previously established defined benefit plan within the meaning of section 4021(a) of ERISA, the time it has been in effect will include the time the predecessor plan was in effect.

(4) *Determination of beneficiary's benefit.* If a beneficiary is eligible for a priority category 3 benefit because of the death of a participant during the 3-year period ending on the termination date, the benefit assigned to priority category 3 for the beneficiary shall be determined as if the participant had died the day before the 3-year period began.

(5) *Automatic benefit increases.* If plan provisions adopted and effective before the beginning of the 5-year period ending on the termination date provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the lowest annuity benefit payable during the 5-year period ending on the termination date determined under paragraph (b)(3) of

this section includes the automatic increases scheduled during the fourth and fifth years preceding termination, subject to the restriction that benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

(6) *Computation of time periods.* For purposes of this section, a plan or amendment is "in effect" on the later of the date on which it is adopted or the date it becomes effective.

[61 FR 34059, July 1, 1996, as amended at 62 FR 67729, Dec. 30, 1997]

§ 4044.14 Priority category 4 benefits.

The benefits assigned to priority category 4 with respect to each participant are the participant's basic-type benefits that do not exceed the guarantee limits set forth in subpart B of part 4022 of this chapter, except as provided in the next sentence. The benefit assigned to priority category 4 with respect to a participant is not limited by the aggregate benefits limitations set forth in § 4022B.1 of this chapter for individuals who are participants in more than one plan or by the phase-in limitation applicable to substantial owners set forth in § 4022.26.

§ 4044.15 Priority category 5 benefits.

The benefits assigned to priority category 5 with respect to each participant are all of the participant's nonforfeitable benefits under the plan.

§ 4044.16 Priority category 6 benefits.

The benefits assigned to priority category 6 with respect to each participant are all of the participant's benefits under the plan, whether forfeitable or nonforfeitable.

§ 4044.17 Subclasses.

(a) *General rule.* A plan may establish one or more subclasses within any priority category, other than priority categories 1 and 2, which subclasses will govern the allocation of assets within that priority category. The subclasses may be based only on a participant's longer service, older age, or disability, or any combination thereof.

(b) *Limitation.* Except as provided in paragraph (c) of this section, whenever